

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2012-008340-001 DT

08/17/2016

HON. ROSA MROZ

CLERK OF THE COURT  
J. Matlack  
Deputy

STATE OF ARIZONA

PATRICIA L STEVENS  
MITCHELL S EISENBERG

v.

KURT DUSTIN COLEMAN (001)

RICHARD K MILLER  
GREGORY J NVAZO

CAPITAL CASE MANAGER

MINUTE ENTRY

**State's MIL #9: Irrelevant Material During Penalty Phase: Arizona Boy's Ranch**

The Court has considered the State's MIL #9: Irrelevant Material During Penalty Phase: Arizona Boy's Ranch, the Defendant's Response, and the State's Reply. The Court does not need oral argument to decide this issue.

According to the State's Motion, the Defendant was placed at Arizona Boys Ranch (ABR) as a juvenile from September 1986 to April 1987. The Defendant was allegedly sexually abused by an older, larger boy at ABR during that time period, and the defense will be presenting mitigation to that effect. According to the defense, it wants to introduce evidence to: (1) corroborate the Defendant's abuse; (2) to challenge the State's claim that the program is a place of opportunity; and (3) describe the culture in which the Defendant lived for one year of his young life. The Defendant has disclosed various documents describing the allegedly terrible conditions at ABR. Almost all of these documents are dated from 1994 to 1998. There is also a "Location History Reports from 1/1/00 thru 12/31/13, and 9/24/13-8/19/14." There is one document entitled: "Ex-Resident Sues Boys Ranch Physical Abuse by Staff Alleged," The Arizona Republic, 6/14/88.

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A.R.S. §13-751(G) defines mitigating circumstances “as any factors proffered by the defendant or the state that are relevant in determining whether to impose a sentence less than death, including any aspect of the defendant’s character, propensities or record and any of the circumstances of the offense.” As explained in *State v. Clabourne*, 194 Ariz. 379, 388, 983 P.2d 748, 757 (1999) (*Clabourne II*), “Mitigating evidence is ‘any aspect of the defendant’s character or record and any circumstance of the offense *relevant* to determining whether a sentence less than death might be appropriate.’ *State v. Spears*, 184 Ariz. 277, 293, 908 P.2d 1062, 1078 (1996).”

As to the documents from 1994-1998 and the document entitled: “Location History Reports from 1/1/00 thru 12/31/13, and 9/24/13-8/19/14,”

THE COURT FINDS that these documents are not relevant to the Defendant’s mitigation. The relevant time period for the Defendant is September 1986 to April 1987, when he was actually at ABR. Incidents from 1994 to 1998 are too far removed from when the Defendant actually lived at ABR. The Court also finds that, even if relevant, the probative value of the information is substantially outweighed by its prejudicial effect or confusion of the issues.

IT IS ORDERED that the documents from 1994-1998 and the document entitled: “Location History Reports from 1/1/00 thru 12/31/13, and 9/24/13-8/19/14” and the information from these documents are precluded.

As to the 1988 Arizona Republic article entitled: “Ex-Resident Sues Boys Ranch Physical Abuse by Staff Alleged,”

THE COURT FINDS that this document is not relevant to the Defendant’s mitigation because the facility complained of was in Greenlee County, while the Defendant was a resident at the Maricopa County facility. The Court also finds that, even if relevant, the probative value of the information is substantially outweighed by its prejudicial effect or confusion of the issues.

IT IS ORDERED that the document entitled: “Ex-Resident Sues Boys Ranch Physical Abuse by Staff Alleged,” The Arizona Republic, 6/14/88 and the information from the document are precluded.

The State also requests to preclude defense witnesses Steven Tate and Jeremy Day because their experiences at ABR are not relevant mitigation for the Defendant. Tate is expected to testify about the conditions at ABR in the middle 1980’s including supervision and violence at the Ranch. According to the State, during his interview, Tate described incidents he experienced with staff and other residents but stated that the Defendant did not witness most of these

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incidents. Day is also expected to testify about the conditions at ABR in the middle 1980's including supervision and violence at the Ranch.

THE COURT FINDS that both Tate and Day's expected testimonies are relevant to challenge the State's claim that the program is a place of opportunity and to describe the culture in which the Defendant lived at ABR. Even if the Defendant did not personally witness what happened with Tate and/or Day, the evidence is still relevant as to whether the Defendant lived in an abusive culture and whether the Defendant felt safe to report the sexual abuse he allegedly experienced. The Court also finds that the probative value of the information is not substantially outweighed by its prejudicial effect or confusion of the issues.

IT IS ORDERED that Tate and Day may testify. The State may assert any additional objections at the time of their testimony, if necessary.

IT IS ORDERED granting in part, and denying in part, the State's MIL #9: Irrelevant Material During Penalty Phase: Arizona Boy's Ranch, in accordance with the above.

In the State's Reply, the State argued for the preclusion of witness Nathaniel Lee Jackson for the first time. The Court also notes that the State has filed a separate motion in limine regarding Jackson. The Court will make a separate ruling regarding Jackson when the motion is fully briefed.

**Defendant's Motion Seeking Permission to File Motion for DCS Records**

The Court has considered the Defendant's Motion Seeking Permission to File Motion for DCS Records and the State's email response. The Court does not need a Reply or oral argument to decide this issue.

The Defendant requests that it be allowed to file a Motion to order the Department of Child Services (DCS) to produce records of investigations into child abuse and neglect by the Arizona Boys Ranch. Given the Court's finding *supra* re: that the relevant time period for the Defendant is September 1986 to April 1987, when he was actually at ABR, and that incidents from 1994 to 1998 are too far removed from when the Defendant actually lived at ABR, the Court is not going to order DCS to produce records of investigations into child abuse and neglect by the Arizona Boys Ranch from 1994 to 1998 as requested by the Defendant. If the Defendant wants to request an order for DCS to produce records of investigations into child abuse and neglect by the Arizona Boys Ranch from 1986 to 1987, the Court will allow that motion to be filed.

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IT IS ORDERED granting the Defendant's Motion Seeking Permission to File Motion for DCS Records of investigations into child abuse and neglect by the Arizona Boys Ranch from 1986 to 1987. If the Defendant does file this motion, the Defendant is directed to endorse the Arizona Attorney General's Office/DCS representative so that DCS may be heard on that motion.